

MAR - 1 1993

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re applications of)	MM Docket No. 92-310
)	
ROBERT M. RICHMOND)	File No. BPH-910703MD
)	
BARBARA BRINDISI)	File No. BPH-910703MI
)	
LAURYN BROADCASTING CORPORATION)	File No. BPH-910703MJ
)	
For a Construction Permit)	
for a New FM Station on Channel)	
265A in Beaumont, California)	
)	
and)	
)	
KAY SADLIER-GILL)	File No. BPH-910611IF
)	
For Modification of the Facilities)	
for Station KATY-FM,)	
Idyllwild, California)	

To: Honorable Walter Miller
Administrative Law Judge

**PETITION TO ENLARGE THE ISSUES AGAINST
LAURYN BROADCASTING CORPORATION**

Barbara Brindisi, by counsel and pursuant to Section 1.229 of the Commission's rules, hereby respectfully petitions the Presiding Judge to add the following issue against the application of Lauryn Broadcasting Corporation ("Lauryn") in the above-identified proceeding:

To determine whether Lauryn Broadcasting Corporation had reasonable assurance of financing for the costs of construction and initial operation of its proposed station at the time that it certified and filed its application, and in the light of the evidence adduced, whether it was financially qualified at that time.

In support whereof, the following is shown.

On February 10, 1993, Lauryn petitioned the Presiding Judge for leave to amend its application and submitted an amendment proposing a substitute source of financing for its

application. Also submitted with the Petition were copies of two financing commitment letters: one from the World Trade Bank, upon which Lauryn states it relied when it certified and filed its application; and one from Superior Financial Mortgage Lending Services, the letter to which Lauryn wants to shift its reliance now. The factual basis for this Petition to Enlarge the Issues lies in Lauryn's Petition for Leave to Amend and the documentation which was submitted with it. This material was first obtained by Brindisi when it was received at her counsel's office in the mail on February 12, 1993. Pursuant to Section 1.229(b)(3) of the Commission's rules, Brindisi must submit this Petition within fifteen days of receipt of the information providing the factual basis for the request. That fifteen-day period expired on a nonbusiness day (February 27). The instant Petition is being filed on the first business day after the expiration of the fifteen-day period. This Petition to Enlarge the Issues is therefore timely filed.

Lauryn filed its application on July 3, 1991. In that application, Lauryn identified its source of \$400,000 worth of financing as the World Trade Bank. Lauryn has now documented that claim by supplying a letter dated July 1, 1991 addressed to Lauryn's sole principal, Lauryn Nicole Cox, and signed by Peter F. Lambert, Senior Vice President of the World Trade Bank. The first paragraph of the letter reads as follows:

This letter will confirm the willingness of our Bank to consider a loan to you, and/or a corporation controlled by you, in the amount of \$400,000 to finance the construction and initial operation of your proposed new FM radio station in Beaumont, California, . . .

A complete copy of the letter is attached hereto as Appendix A.

The World Trade Bank's letter of July 1, 1991 is inadequate to serve as the bona fide basis for a broadcast applicant's claim to being financially qualified. The letter does not express the bank's present firm intention to finance Lauryn's proposed station (subject to contingences about future creditworthiness). Rather, it merely "confirm[s] the willingness of our Bank to consider a loan to you, . . ." (emphasis added). This letter clearly is only a commitment to take under consideration at some future time the question of whether to lend funds to Lauryn. It is not, in and of itself, a commitment to lend the funds.

Commission precedent is clear that to be a valid basis for financial qualification, a financing letter must expressly state the prospective lender's present firm intention to make the loan, future conditions permitting. Merrimack Valley Broadcasting, Inc., 82 F.C.C.2d 166, 167 (1990). A promise only to consider in the future the question of making the loan without expressing the lender's present firm intention to provide the funding is less than the Commission requires for financial qualification. See, Fox Television Stations, Inc., 5 F.C.C.Rcd. 5255 (1990) (a "willingness to consider" a loan found to be insufficient); John D. Bomberger, 7 F.C.C.Rcd. 5516 (Rev.Bd. 1992) (lender's testimony that the financing letter "represents . . . our intent to look at a loan application," was also insufficient).

The World Trade Bank letter is intrinsically insufficient to provide Lauryn with the comfort it relied upon for its original financial qualifications. The Bank does not make a commitment in the unequivocating straight-forward manner with unambiguous language which the Commission requires. Therefore, a material question of fact exists concerning the real intention of the World Trade Bank to finance Lauryn's proposed station at the time that Lauryn certified and filed its application. An issue to determine the Bank's intention must be added and tried before Lauryn's application could be granted.

Lauryn cannot rest in the hope that the Presiding Judge will grant its Petition for Leave to Amend, accept the amendment concerning substitute financing, and thereby cure its defect. As Brindisi pointed out in her Opposition to Lauryn's Petition for Leave to Amend, Lauryn's original financing arrangements must have been bona fide and valid before it is entitled to insert a substitute.

It is axiomatic that an applicant must have been genuinely financially qualified at the time it originally certified that it was qualified. No amendment or legal maneuvering can overcome that obstacle. Aspen FM, Inc., 68 R.R.2d 1635 (1991); Edwin A. Bernstein, 4 F.C.C.Rcd. 8420 (Rev.Bd. 1989), rev. den., 5 F.C.C.Rcd. 2843 (1990). Thus this financial qualifications issue must be added regardless of the disposition of Lauryn's Petition for Leave to Amend.

Pursuant to Section 1.229(e) of the Commission's rules, Brindisi is submitting herewith in Appendix B information about

further discovery she intends to conduct if the requested issue is added against Lauryn.

WHEREFORE, Brindisi respectfully urges the Presiding Judge to grant its Petition and to designate the above-identified issue against the application of Lauryn Broadcasting Corporation.

Respectfully submitted,

BARBARA BRINDISI

By: 
Donald E. Martin

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(202) 887-5070

Her Attorney

March 1, 1993

APPENDIX A

World Trade Bank

9944 Santa Monica Boulevard
Beverly Hills, California 90212-1691
Telephone 213/551-0100
FAX 213/556-6721

July 1, 1991

Ms. Lauryn Nicole Cox

LAURYN BROADCASTING CORPORATION
137 S. San Fernando Blvd.
Burbank, Calif. 91502

Dear Ms. Cox:

This letter will confirm the willingness of our Bank to consider a loan to you, and/or a corporation controlled by you, in the amount of \$400,000 to finance the construction and initial operation of your proposed new FM radio station in Beaumont, California, under the following terms and conditions:

Term: Five years on one year notes.
Repayment: Interest only for the first year then fully amortized over the remaining 48 months.
Rate/Fees: WTB prime plus 2.5%. Loan fee of 3.0%
Collateral: Pledge of station assets and of stock of corporation, if any.

We understand that the Federal Communications Commission requires that you have reasonable assurance of the availability of the above described loan. This letter is intended to provide such reasonable assurance but does not constitute a binding commitment on the part of the Bank to make the loan. We are familiarizing ourselves with your credit history. Our willingness to make such a loan is expressly conditioned upon your receiving all necessary authorizations from the FCC, including the grant of your application for a construction permit in Beaumont, Calif. and is subject to:

1. No adverse changed conditions in the circumstances presented to the Bank which were considered in our evaluation of the loan request.
2. A satisfactory credit review.
3. The negotiation of loan documents (including, without limitation, security and guaranty agreements) all satisfactory to the Bank, and its counsel, in their sole discretion.

Yours very truly,



Peter F. Lambert
Senior Vice President
Entertainment Industries Division

APPENDIX B

PROPOSED SUPPLEMENTAL DISCOVERY ON THE REQUESTED
FINANCIAL ISSUE AGAINST LAURYN BROADCASTING CORPORATION

In the event that Brindisi's Petition to Enlarge the Issues against Lauryn Broadcasting Corporation is granted and the issue is added, Brindisi proposes to conduct the following discovery on that issue.

DEPOSITIONS UPON ORAL EXAMINATION

Brindisi would seek to depose upon oral examination the following persons:

1. Lauryn Nicole Cox, Lauryn's sole principal and the addressee of the World Trade Bank's financing letter dated July 1, 1991.
2. Peter F. Lambert, Senior Vice President, Entertainment Industries Division, World Trade Bank, the signatory of the World Trade Bank's financing letter dated July 1, 1991.
3. Each and every other person whom Lauryn intends to offer as a witness to testify on this issue at the hearing.

DOCUMENT PRODUCTION

Brindisi requests that the following documents be produced at the office of her counsel within ten days after the release of the order adding the requested issue against Lauryn.

1. Any and all documents (including but not limited to correspondence, memoranda, business plans, projections, or financial statements) directed to or provided to the World Trade Bank, its employees or its agents, by Lauryn, (or its

principals, its employees or agents, or any other person on Lauryn's behalf):

(a) for the purpose of inducing the Bank and/or Peter Lambert to commit to finance Lauryn's proposed station at Beaumont, California, or

(b) for the purpose of inducing the Bank and/or Peter Lambert to render any communication expressing an interest in funding and/or an intention to fund Lauryn's proposed station at Beaumont, California, or

(c) for any other purpose related to Lauryn's proposed station at Beaumont, California.

2. Any and all documents evidencing any communication to or from any employee or agent of the World Trade Bank pertaining to Lauryn's proposed station at Beaumont, California including but not limited to, correspondence, memoranda, minutes of meetings, notes of conferences, etc.

3. Any and all documents evidencing any communication to or from any principal, employee or agent of Lauryn or any other person acting on Lauryn's behalf pertaining to the obtaining, retaining or losing of financing from the World Trade Bank for Lauryn's proposed station at Beaumont, California including but not limited to, correspondence, memoranda, minutes of meetings, notes of conferences, etc.

CERTIFICATE OF SERVICE

I, Donald E. Martin, hereby certify this 1st day of March, 1993, that I have caused a copy of the foregoing document to be served by United States Mail with first class postage prepaid upon the following:

* Honorable Walter C. Miller
Administrative Law Judge
Federal Communications Commission
Washington, D.C. 20554

Robert Zauner, Esquire
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Donald E. Martin

* Served by hand delivery.